

to real executions, but only to executions in personal actions; and, therefore, the sheriff is, in England, allowed no poundage fees for executing a *habere facias possessionem*. (m) Nor do they embrace any case where money is raised by process of attachment for contempt, upon which no poundage fees can be charged. (n)

It would seem, that the sheriff's right to poundage fees accrues and is complete in all cases immediately that the writ is regularly executed; although no sale should be made; or the execution, because of some antecedent error should be quashed, or the suit should afterwards be compromised. (o) In strictness the sheriff should make a return of the whole sum produced by the sale, when the court will order it to be paid over, deducting the poundage; but where the sheriff has received the poundage fees to which he was legally entitled, he will be allowed to retain them. (p)

It has been urged, that the sheriff has a lien upon the property taken in execution, for his poundage fees. But it is no where directly said, that he has any such lien upon the property taken, either as against the plaintiff or the defendant; or that he has a right to hold it in any way until his fees are paid. Yet the allowance of such a lien, so far as it does not conflict with the rights of others, or that superintending control necessary to the due administration of justice would seem to be entirely reasonable, and sustainable upon principles analogous to those on which tradesmen and officers are allowed to have a lien upon property in their possession to secure the payment of their compensation and fees. But such a common law lien can only exist as an associate with possession; it begins and ends with possession. (q)

In this case the petitioner having been lawfully and completely divested of the possession of all the property he had taken in execution, he certainly can have no lien, according to the common law, upon it, or its proceeds, which the court is now about to distribute. And there is not the slightest ground to maintain, that a sheriff has a general lien on the property taken by him in execution, like the lien of the state upon the property of its debtors, or a plaintiff's judicial lien, as on a judgment at law, or a lien according to the civil law which follows the property on which it has

(m) *Peacock v. Harris*, 1 Salk. 331.—(n) *The King v. Palmer*, 2 East. 411.—

(o) *Peacock v. Harris*, 1 Salk. 331; *Earle v. Plummer*, 1 Salk. 332; *Tyson v. Paske*, 2 Ld. Raym. 1212; *Alchin v. Wells*, 5 T. R. 470; *Rawstorne v. Wilkinson*, 2 Mau. & Sel. 256.—(p) Com. Dig. tit. Viscount, (F. 2.); *Woodgate v. Knatchbull*, 2 T. R. 148; *Alchin v. Wells*, 5 T. R. 470.—(q) Selw. N. P. 1286.